

HOUSE BILL NO. 595  
INTRODUCED BY S. DICKENSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO ALCOHOL OR DRUG CONCENTRATION TESTS; INCREASING THE DRIVER'S LICENSE SUSPENSION PERIODS FOR A FIRST REFUSAL TO SUBMIT TO AN ALCOHOL OR DRUG CONCENTRATION TEST; PROVIDING CRIMINAL PENALTIES FOR A SECOND OR SUBSEQUENT REFUSAL TO SUBMIT TO AN ALCOHOL OR DRUG CONCENTRATION TEST; AND AMENDING SECTIONS 61-5-212, 61-8-402, AND 61-8-409, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering vehicle inoperable.** (1) (a) A person commits the offense of driving a motor vehicle during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state; or

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle under federal regulations.

(b) A person convicted of the offense of driving a motor vehicle during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500, except that if the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406, or [section 4], or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license or privilege to drive was

suspended or revoked shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

**Section 2.** Section 61-8-402, MCA, is amended to read:

**"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision

resulting in property damage; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(c) Before administering one or more of the tests, the officer shall inform the person that the test may be refused but that refusal of the test for a second or subsequent time within 10 years is an offense for which the person may be punished as provided by law.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable, in addition to other penalties that may be imposed pursuant to [section 4], upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of ~~6~~ 12 months with no provision for a restricted probationary license;

(ii) upon a second ~~or subsequent~~ refusal within ~~5~~ 10 years of a previous refusal, as determined from the records of the department, a suspension of ~~4 year~~ 18 months with no provision for a restricted probationary license; and

(iii) upon a third or subsequent refusal within 10 years of a previous refusal, as determined from the records of the department, a suspension of 2 years.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a

commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges and the imposition of any other penalties as provided for in [section 4], the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a ~~1-year~~ 5-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).

(7) A ~~nonresident~~ nonresident's driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

**Section 3.** Section 61-8-409, MCA, is amended to read:

**"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test, that refusal of the test for a second or subsequent time within 10 years is an offense, and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to ~~1 year~~ 2 years of that person's driver's license and other penalties that may be imposed pursuant to [section 4].

(4) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402 and to impose additional penalties pursuant to [section 4].

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through (8) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

**NEW SECTION. Section 4. Unreasonable refusal to submit to test.** (1) It is unlawful for a person to refuse for a second or subsequent time to submit to a blood or breath test requested in accordance with 61-8-402 or a preliminary alcohol screening test requested in accordance with 61-8-409. Except as provided in this section, a person who violates this section is guilty of a misdemeanor and upon conviction shall be punished as provided by law. Evidence of a person's refusal to submit to a test may be introduced to show a violation of this section, but a refusal to submit to a test pursuant to this section and a test pursuant to 61-8-402 may not be considered as separate offenses.

(2) Upon a fourth or subsequent refusal to submit to a test, a person who violates this section is guilty of a felony and upon conviction shall be punished as provided by law.

(3) A penalty provided for in this section may not be suspended, and imposition of the penalty may not be deferred.

(4) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

NEW SECTION. **Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 4].

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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